

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

Kevin VanHoosier	:	CASE NO.: <u>3:14-cv-2425</u>
1317 North Township Road 73	:	
Tiffin, OH 44883	:	
	:	
	:	
Plaintiff,	:	JUDGE
v.	:	
	:	
Synchrony Bank f/k/a GE Capital Retail	:	
Bank	:	
950 Forrer Boulevard,	:	<u>COMPLAINT</u>
Kettering, Ohio 45420	:	
	:	
and	:	
	:	
JOHN AND JANE DOES 1-10	:	A Trial by the Maximum Number of Jurors
Defendants.	:	is hereby Demanded
	:	
	:	

Here comes Plaintiff Kevin VanHoosier, (hereinafter “Plaintiff”) and sets forth a *Complaint* against Defendant Synchrony Bank f/k/a GE Capital Retail Bank (hereinafter “Defendant”) and Defendant John and Jane Does 1 – 10 (Collectively “Defendants”) as follows:

JURISDICITON

1. This action arises out of Defendants' repeated violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, et. seq. (the "TCPA").

2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that Defendants transact business here and a substantial portion of the acts giving rise to this action occurred here.

PARTIES

3. Plaintiff, Kevin VanHoosier (hereafter "Plaintiff"), is an adult individual whose residence is in Tiffin, Ohio, and is a "person" as defined by 47 U.S.C. § 153(39).

4. The Defendant, Synchrony Bank f/k/a GE Capital Retail Bank ("Synchrony"), is an Ohio business entity with an address of 950 Forrer Boulevard, Kettering, Ohio 45420, and is a "person" as defined by 47 U.S.C.A. § 153(39).

FACTS

5. Within the last year, Synchrony contacted Plaintiff in an attempt to collect a consumer debt allegedly owed by Plaintiff (the "Debt").

6. At all times mentioned herein, Synchrony called Plaintiff's cellular telephone number by using an automated telephone dialer system ("ATDS") and by using an artificial or prerecorded voice.

7. When Plaintiff answered calls from Synchrony, he was met with a prerecorded message before being connected to the next available Synchrony representative.

8. Plaintiff spoke with a live representative and requested that all calls to him cease.

9. Despite being advised to stop the calls, Synchrony continued to place automated calls to Plaintiff. The calls were annoying to Plaintiff and intruded on his right to be free from invasions of his privacy.

COUNT I
VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT –
47 .S.C. § 227, et seq.

10. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

11. At all times mentioned herein and within the last year, Synchrony called Plaintiff on his cellular telephones using an ATDS or predictive dialer and/or by using a prerecorded or artificial voice.

12. In expanding on the prohibitions of the TCPA, the Federal Communications Commission (FCC) defines a Predictive Dialer as “a dialing system that automatically dials consumers’ telephone numbers in a manner that “predicts” the time when a consumer will answer the phone and a [representative] will be available to take the call...”2003 TCPA Order, 18 FCC 36 Rcd 14022. The FCC explains that if a representative is not “free to take a call that has been placed by a predictive dialer, the consumer answers the phone only to hear ‘dead air’ or a dial tone, causing frustration.” *Id.* In addition, the TCPA places prohibitions on companies that “abandon” calls by setting “the predictive dialers to ring for a very short period of time before disconnecting the call; in such cases, the predictive dialer does not record the call as having been abandoned.” *Id.*

13. Synchrony’s telephone systems have some earmarks of a Predictive Dialer.

14. When Plaintiff answered the phone, he was met with a prerecorded message before Synchrony’s telephone system would connect him to the next available representative.

15. Upon information and belief, Synchrony’s Predictive Dialers have the capacity to store or produce telephone numbers to be called, using a random or sequential number generator.

16. Synchrony contacted Plaintiff by means of automatic telephone calls to his cellular phone knowing that it lacked consent to call his number in light of him revoking his consent. As such, each call placed to Plaintiff was made in knowing and/or willful violation of the TCPA, and subject to treble damages pursuant to 47 U.S.C. § 227(b)(3)(C).

17. The telephone number called by Synchrony was assigned to a cellular telephone service for which Plaintiff incurs charges for incoming calls pursuant to 47 U.S.C. § 227(b)(1).

18. The calls from Synchrony to Plaintiff were not placed for “emergency purposes” as defined by 47 U.S.C. § 227(b)(1)(A)(i).

19. Plaintiff is entitled to an award of \$500.00 in statutory damages for each call made in negligent violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

20. As a result of each call made in knowing and/or willful violation of the TCPA, Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendants:

1. Three times the amount of Plaintiff’s actual damages or two hundred dollars, whichever is greater, pursuant to O.R.C. § 1345.09(B);
2. Statutory damages pursuant to 47 U.S.C. § 227(b)(3)(B) & (C);
3. Granting Plaintiff such other and further relief as may be just and proper.

Dated: October 31, 2014

Respectfully submitted,

By: /s/ Sergei Lemberg

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JURY DEMAND

Plaintiff hereby makes a demand for trial by the maximum number of jurors allowed by law, on all triable issues.

/s/ Sergei Lemberg
Sergei Lemberg, Esq.